IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 396 OF 1995.

1. Shri Vasantrao Sidu Patil.
2. Sou.Sonabai Vasantrao Patil
   (since deceased)
3. Kumari Vidya Vasantrao Patil,
4. Kumari Lila Vasantrao Patil. ... Appellants.

Versus.

1. Nandkumar Shamrao Tiwale,
2. Dhondiram Dattatraya Kopardekar.
3. Dattatraya Rangrao Jadhav,
4. The United India Insurance Co.Ltd.,
   Station Raod, Kolhapur. ... Respondents.

Shri P.D.Dalvi for the Appellants.

Shri P.R.Arjunwadkar for the Respondents Nos.1 to 3.

Shri S.R.Singh for Respondent No.4.

CORAM : ABHAY S.OKA, J.

DATED : 13th December, 2007.

ORAL JUDGMENT.:

1. I have heard the learned Advocates appearing for the parties yesterday and the matter is kept for the dictation of judgment today. The Appellants are the original Claimants in a claim petition under section 110A of the Motor Vehicles Act, 1939. The claim has been filed on account of the death of one Anil Vasantrao Patil in an alleged motor accident. This is an unfortunate case where the claim petition has been dismissed.

2. The case of the Appellant is that the deceased was residing along with his uncle Tanaji Patil at Kolhapur. On 21st April 1985 at about 9.30 p.m. he was proceeding towards study room which he had taken on rent. He was proceeding along the road connecting Rankala S.T.Stand and Rankala Tower at Kolhapur. While the deceased was walking by the left side of the said road near the house of one Major Sohani, a motor cycle bearing registration No.MXK-3334 came in high speed and gave a dash to the deceased. Due to the said dash he was thrown on the left side of the stony edge and stony wall of the house of Major Sohani and he fell in a drain which was full of mud. It is alleged that the motor cyclist also fell on his right side. At the relevant time the 2nd Respondent was plying the motor cycle. It is alleged that the 2nd Respondent did not take care to attend the deceased and he did not disclose the incident.

3. After about 10 to 15 minutes after the incident, some one noticed that the deceased was lying in the drain and by the time he was pulled out, he had succumbed to the injuries.

4. The Respondents filed written statements and denied the involvement of motor cycle No.MXK-3334. It

is contended that the 2nd Respondent has been falsely implicated.

5. The Appellants examined the 1st Appellant, Shri Khanderao Parashuram Varute and Shri Tanaji Patil as their witnesses. The learned Member of the Tribunal held that the Appellants have failed to prove involvement of the said motor cycle in the accident.

6. The learned Advocate for the Appellants has invited my attention to the pleadings and the oral evidence on record. He invited my attention to the evidence of witness No.2 Khanderao Parashuram Varute. He stated that the said evidence clearly proves the involvement of the motor cycle. He submitted that there was no reason for the said witness to depose falsely. He submitted that there was no reason to discard the evidence of the said witness as regards the involvement of the said motor cycle in the accident. He submitted that as against this evidence no evidence in rebuttal was led by the Respondents. He submitted that as the Tribunal is not bound by the strict rule of evidence, the case made out by the Appellants ought to have been accepted. As regards the involvement of the motor cycle and the negligence on the part of the 2nd Respondent, he submitted that a case is made out for grant of compensation as voluminous documentary evidence has been

adduced to prove the claim for compensation.

7. I have carefully considered the submissions. I have perused the notes of evidence and record of the claim petition. It appears that the FIR was registered on 22nd April 1985 by one Babasaheb Shinde, Police Head Constable attached to Junarajwada Police Station. In the FIR the Police Head Constable has narrated the information supplied to him by two witnesses Ajit Motilal Shaha and Madhav Yeshwant Soni. According to the first informant, the said Ajit Motilal Shaha informed him that at 9.30 p.m. he heard some noise from the road when he found that one motor cycle of Rajdoot make was lying on the road and the driver and pillion rider were also lying on the road. He stated that he along with others helped both the persons and after some time both of them left the place of incident. The said witness did not notice the registration number of the motor vehicle. According to the first informant the said witness stated that about 10 to 15 minutes thereafter a person plying a scooter gave a dash to a man plying a bicycle. The persons nearby helped the person plying the bicycle and he left the place. At that time somebody pointed out that a person was lying in the nearby gutter. According to the first informant, the said witness Ajit Motilal Shaha expressed apprehension that the motor cycle of Rajdoot make which

was lying on the road may have given a dash to the person who was lying in the gutter. The first informant stated that the 2nd witness named in the F.I.R. was also telling the same version.

8. It is pertinent to note that both the said witnesses have not been examined by the Appellants. It is also pertinent to note that from th F.I.R. it appears that both the witnesses were not sure about the involvement of the motor cycle of Rajdoot make. In any case none of them could give the registration number of the said motor cycle.

9. The 1st and 3rd witnesses examined by the Appellants have no personal knowledge of the incident. The 2nd witness Khanderao claims to be an auto-rickshaw driver. The said witness deposed that while he was at auto-rickshaw stand, he got passengers at about 9.15 p.m. While proceeding from Rankala via Rankala Tower Road he noticed that one of the two persons sitting in his auto-rickshaw was a patient. He noticed a motor cycle proceeding to Phulesadi in a high speed overtaking him and near the house of Major Sohani the motor cycle gave a dash to one pedestrian. He stated that the motor cycle had also fallen down and the pedestrian fell down in the nearby gutter. He stated that he stopped his vehicle for a minute or two when other persons also

gathered there. He stated that he noticed the registration number of the motor cycle MXK 3334. He stated that he did not wait at the spot as there was a patient sitting in his auto-rickshaw.

10. It must be stated here that it is not the case of the Appellants that the statement of the said witness was recorded by the Police during investigation. The witness had deposed on 28th September 1993 i.e. nearly eight years after the incident. The deponent mentions the registration number of the motor cycle in his evidence. It is pertinent to note that even going by the evidence of the said witness, he did not bother to inform either the Police or any other authority regarding the incident. All these aspects create a serious doubt about the truthfulness of the said witness. It is very difficult to rely upon the version of the said witness.

11. Apart from the deposition of the said witness, there is absolutely no other evidence on record to prove the involvement of the motor cycle of Rajdoot make. It is true that the said Anil Patil succumbed to the injuries sustained by him. However, this is a case where there is absolutely no evidence to prove the involvement of the motor cycle bearing registration No.MXK 3334 and therefore, it is very difficult to find

fault with the findings recorded by the Tribunal after appreciation of the evidence.

12. Accordingly the Appeal is dismissed with no order as to costs.

Judge.